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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 TERRELL O'NEAL,

11 Plaintiff,

No. CIV S-04-0260 LKK JFM P

12 vs.

13 WHITE, et al.,

14 Defendants.

ORDER

15 _____/
16 Plaintiff is a state prisoner proceeding pro se and in forma pauperis with a civil
17 rights action pursuant to 42 U.S.C. § 1983. By order filed February 3, 2005, this court
18 determined that plaintiff's amended complaint states a cognizable claim for relief against
19 defendants White; C.C. I Speth; C.O. T. Lee; Psychiatrist Dr. Soufi; Dr. Radumishiu; Gallardo;
20 and Crawford and directed plaintiff to return forms necessary for service of process on said
21 defendants. On February 23, 2005, plaintiff returned the necessary forms.

22 On February 15, 2005, plaintiff filed a document styled "Motion to Amend and
23 Consolidate Complaint and Additional Def's," and on April 19, 2005, plaintiff filed a request for
24 leave to file a supplemental complaint pursuant to Fed. R. Civ. P. 15(d). Neither motion was
25 accompanied by a proposed second amended complaint.

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1 By order filed May 9, 2005, plaintiff was informed that Local Rule 15-220
2 requires the operative pleading in an action to be complete in itself without reference to any prior
3 pleading, see Local Rule 15-220, plaintiff's amended complaint was dismissed and plaintiff was
4 given leave to file a second amended complaint naming all defendants and raising all claims that
5 he seeks to pursue in this action. After receiving an extension of time, plaintiff has now filed a
6 second amended complaint.

7 It is apparent that plaintiff is attempting to raise in this action Eighth Amendment
8 claims based on alleged deliberate indifference to his serious medical need for proper mental
9 health care and alleged failure to protect plaintiff from sexual assault by other inmates, and he
10 has adequately stated such claims at least against defendant White. There are, however, many
11 other individuals named in the body of the second amended complaint that plaintiff may have
12 intended to name as defendants in this action.

13 Federal Rule of Civil Procedure 10(c) requires that all named defendants be
14 identified in the caption of a complaint, and plaintiff's failure to comply with this rule has made
15 it difficult to determine who all of the defendants are in this action. In addition, although it
16 appears that plaintiff intends to name some or all of them as defendants in this action, he has
17 failed to adequately allege specific acts or omissions by these individuals that caused or
18 contributed to violations of plaintiff's constitutional rights.

19 For these reasons, the second amended complaint will be dismissed and plaintiff
20 will be given an opportunity to file a third amended complaint. The court will send plaintiff a
21 form civil rights complaint, which he should use to prepare his third amended complaint. Every
22 named defendant should be listed on the caption of the third amended complaint and in the
23 "Defendants" section of the form complaint.

24 If plaintiff chooses to file a third amended complaint, plaintiff must demonstrate
25 how the conditions complained of have resulted in a deprivation of plaintiff's constitutional
26 rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, the second amended complaint

1 must allege in specific terms how each named defendant is involved. That is, plaintiff must
2 allege specific acts or omissions by each named defendant that caused or contributed to the
3 alleged violations of his constitutional rights. There can be no liability under 42 U.S.C. § 1983
4 unless there is some affirmative link or connection between a defendant's actions and the claimed
5 deprivation. Rizzo v. Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir.
6 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, vague and conclusory
7 allegations of official participation in civil rights violations are not sufficient. Ivey v. Board of
8 Regents, 673 F.2d 266, 268 (9th Cir. 1982).

9 In addition, plaintiff is informed that once plaintiff files a third amended
10 complaint, prior pleadings no longer serves any function in the case. Therefore, in a third
11 amended complaint, as in prior complaints, each claim and the involvement of each defendant
12 must be sufficiently alleged.

13 Plaintiff has included a motion for appointment of counsel with his second
14 amended complaint. The United States Supreme Court has ruled that district courts lack
15 authority to require counsel to represent indigent prisoners in § 1983 cases. Mallard v. United
16 States Dist. Court, 490 U.S. 296, 298 (1989). In certain exceptional circumstances, the court
17 may request the voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). Terrell v.
18 Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36
19 (9th Cir. 1990). In the present case, the court does not find the required exceptional
20 circumstances. Plaintiff's motion for the appointment of counsel will therefore be denied.

21 Plaintiff has also appended a motion for preliminary injunction to his second
22 amended complaint. The principal purpose of preliminary injunctive relief is to preserve the
23 court's power to render a meaningful decision after a trial on the merits. See C. Wright & A.
24 Miller, 11 Federal Practice and Procedure, §2947 (1973). In addition to demonstrating that he
25 will suffer irreparable harm if the court fails to grant the preliminary injunction, plaintiff must
26 show a "fair chance of success on the merits" of his claim. Sports Form, Inc. v. United Press

1 International, Inc., 686 F.2d 750, 754 (9th Cir. 1982), quoting Benda v. Grand Lodge of
2 International Association of Machinists and Aerospace Workers, 584 F.2d 308, 315 (9th Cir.
3 1979). Implicit in this required showing is that the relief awarded is only temporary and there
4 will be a full hearing on the merits of the claims raised in the injunction when the action is
5 brought to trial. In addition, as a general rule this court is unable to issue an order against
6 individuals who are not parties to a suit pending before it. Zenith Radio Corp. v. Hazeltine
7 Research, Inc., 395 U.S. 100 (1969).

8 For the foregoing reasons, plaintiff's motion for preliminary injunction will be
9 denied without prejudice to its renewal, if appropriate, with the filing of the third amended
10 complaint.

11 In accordance with the above, IT IS HEREBY ORDERED that:

12 1. Plaintiff's second amended complaint is dismissed.

13 2. Plaintiff is granted thirty days from the date of service of this order to file a
14 third amended complaint that complies with the requirements of the Civil Rights Act, the Federal
15 Rules of Civil Procedure, and the Local Rules of Practice; the third amended complaint must be
16 prepared on the form provided with this order, bear the docket number assigned this case and
17 must be labeled "Third Amended Complaint"; plaintiff must file an original and two copies of
18 the third amended complaint; failure to file a third amended complaint in accordance with this
19 order will result in a recommendation that this action be dismissed.

20 3. Plaintiff's August 4, 2005 motion for appointment of counsel is denied.

21 4. Plaintiff's August 4, 2005 motion for preliminary injunction is denied without
22 prejudice to its renewal, if appropriate, with the filing of the proposed third amended complaint.

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1 5. The Clerk of the Court is directed to send plaintiff this Court's form for a
2 prisoner civil rights action pursuant to 42 U.S.C. § 1983 and accompanying instructions.

3 DATED: October 12, 2005.

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6 UNITED STATES MAGISTRATE JUDGE

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